

1 Amy B. Vandeveld, SBN 137904
2 LAW OFFICES OF AMY B. VANDEVELD
3 1850 Fifth Avenue, Suite 22
4 San Diego, California 92101
5 Telephone: (619) 231-8883
6 Facsimile: (619) 231-8329

7 Attorney for Plaintiff

FILED
07 DEC 20 PM 4:22
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By: *A*
DEPUTY

8 IN THE UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 vs.

13 EUROPEAN CAR SERVICE; ANDREW
14 MACIEJEWSKI; ZENNON SMOCZYNISKI and
DOES 1 THROUGH 10, Inclusive,

15 Defendants.

Case No.: *07 CV 2394 LAB WMC*

CIVIL COMPLAINT

DEMAND FOR JURY TRIAL
[F.R.C.P. §38(b);
Local Rule 38.1]

17 Plaintiff, KAREL SPIKES (hereinafter referred to as
18 "Plaintiff"), file this cause of action against Defendants
19 EUROPEAN CAR SERVICE, ANDREW MACIEJEWSKI, ZENNON SMOCZYNISKI and
20 DOES 1 THROUGH 10, Inclusive, and would show unto the Court the
21 following:

22 I.

23 JURISDICTION AND VENUE

24 1. This Court has original jurisdiction of this civil
25 action pursuant to 28 USC §1331, 28 USC §§1333(a)(3) and
26 1333(a)(4) for claims arising under the Americans with
27 Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's
28 supplemental jurisdiction, 28 USC §1337.

1 2. Venue in this Court is proper pursuant to 28 USC
2 §§1331(b) and (c).

3 3. Pursuant to 28 USC §1337(a), Plaintiff shall assert
4 all causes of action based on state law, as plead in this
5 complaint, under the supplemental jurisdiction of the federal
6 court. All the causes of action based on federal law and those
7 based on state law, as herein stated, arose from a common nuclei
8 of operative fact. That is, Plaintiff was denied equal access
9 to Defendants' facilities, goods, and/or services in violation
10 of both federal and state laws and/or was injured due to
11 violations of federal and state access laws. The state actions
12 of Plaintiff are so related to the federal actions that they
13 form part of the same case or controversy. The actions would
14 ordinarily be expected to be tried in one judicial proceeding.

15 **II.**

16 **THE PARTIES**

17 4. Defendant EUROPEAN CAR SERVICE is, and at all times
18 mentioned herein was, a business or corporation or franchise
19 organized and existing and/or doing business under the laws of
20 the State of California. EUROPEAN CAR SERVICE is located at
21 8855 La Mesa Boulevard, La Mesa, CA (hereinafter "the subject
22 property".) Plaintiff is informed and believes and thereon
23 alleges that Defendant EUROPEAN CAR SERVICE is, and at all times
24 mentioned herein was, the owner, lessor or lessee of the subject
25 property and/or the owner and/or operator of the public
26 accommodation located at the subject property.

27 5. Defendant ANDREW MACIEJEWSKI is, and at all times
28 mentioned herein was, an individual residing in and/or doing

1 business under the laws of the State of California. Plaintiff is
2 informed and believes and thereon alleges that Defendant ANDREW
3 MACIEJEWSKI is, and at all times mentioned herein was, the owner,
4 lessor or lessee of the subject property.

5 6. Defendant ZENNOD SMOCZYNSKI is, and at all times
6 mentioned herein was, an individual residing in and/or doing
7 business under the laws of the State of California. Plaintiff is
8 informed and believes and thereon alleges that Defendant ZENNOD
9 SMOCZYNSKI is, and at all times mentioned herein was, the owner,
10 lessor or lessee of the subject property.

11 7. Plaintiff is informed and believes, and thereon
12 alleges, that Defendants and each of them herein were, at all
13 times relevant to the action, the owners, franchisees, lessees,
14 general partners, limited partners, agents, employees,
15 employers, representing partners, subsidiaries, parent
16 companies, joint venturers and/or divisions of the remaining
17 Defendants and were acting within the course and scope of that
18 relationship. Plaintiff is further informed and believes, and
19 thereon alleges, that each of the Defendants herein gave
20 consent to, ratified, and/or authorized the acts alleged herein
21 of each of the remaining Defendants.

22 8. Plaintiff is an otherwise qualified disabled
23 individual as provided in the Americans with Disabilities Act
24 of 1990, 42 USC §12102, Part 5.5 of the California Health &
25 Safety Code and the California Unruh Civil Rights Act, §§51, et
26 seq., 52, et seq., the California Disabled Persons Act, §§54,
27 et seq., and other statutory measures which refer to the
28 protection of the rights of "physically disabled persons."

1 Plaintiff visited the public accommodation owned and/or
2 operated by Defendants and/or located at the subject property
3 for the purpose of availing himself of the goods, services,
4 facilities, privileges, advantages, or accommodations operated
5 and/or owned by Defendants and/or located on the subject
6 property.

7 9. Plaintiff is informed and believes and thereon alleges
8 that the subject facility has been newly constructed and/or
9 underwent remodeling, repairs, or alterations since 1971, and
10 that Defendants have failed to comply with California access
11 standards which applied at the time of each such new
12 construction and/or alteration.

III.

FACTS

15 10. Plaintiff has a mobility impairment and uses a
16 wheelchair. Moreover, he has had a history of or has been
17 classified as having a physical impairment, as required by 42
18 USC §12102(2)(A).

19 11. On or about July 10, 2007 and continuing through the
20 present date, Plaintiff was denied full and equal access to the
21 facilities owned and/or operated by the Defendants because the
22 facility and/or subject property were inaccessible to members
23 of the disabled community who use wheelchairs for mobility.
24 Plaintiff was denied full and equal access to portions of the
25 property because of barriers which included, but are not
26 limited to, inaccessible path of travel and lack of accessible
27 parking space, as well as, lack of signage for said space.
28 Plaintiff was also denied full and equal access because of

1 discriminatory policies and practices regarding accommodating
2 people with disabilities. Plaintiff filed this lawsuit to
3 compel compliance with access laws and regulations.

4 12. As a result of Defendants' failure to remove
5 architectural barriers, Plaintiff suffered injuries. People
6 with disabilities, because of the existing barriers, are denied
7 full and equal access to the Defendants' facilities. The ADA
8 has been in effect for more than 16 years. Given the vast
9 availability of information about ADA obligations, including
10 FREE documents which are available from the U.S. Department of
11 Justice by calling (800) 514-0301 or at the following web
12 sites: www.sba.gov/ada/smbusgd.pdf, www.ada.gov/taxpack.pdf and
13 www.usdoj.gov/crt/ada, the failure of Defendants to comply with
14 their barrier removal obligations is contemptible.

15 13. Plaintiff is an otherwise qualified individual as
16 provided in the Americans with Disabilities Act of 1990, 42 USC
17 §12102, the Rehabilitation Act of 1973, Section 504 (as amended
18 29 USC §794) and the California Unruh Civil Rights Act, Civil
19 Code §§51, 52, 54.1, and 54.3, and other statutory measures
20 which refer to the protection of the rights of "physically
21 disabled persons." Plaintiff visited the public facilities
22 owned and operated by Defendants for the purpose of availing
23 himself of the goods and services offered and provided by
24 Defendants and/or for the purpose of obtaining removal of
25 architectural barriers and/or modification of policies,
26 practices and procedures to provide accessibility to people
27 with disabilities. Plaintiff was injured in fact, as set forth
28 more specifically herein.

1 14. Plaintiff alleges that Defendants will continue to
2 operate public accommodations which are inaccessible to him and
3 to other individuals with disabilities. Pursuant to 42 USC
4 §12188(a), Defendants are required to remove architectural
5 barriers to their existing facilities.

6 15. Plaintiff has no adequate remedy at law for the
7 injuries currently being suffered in that money damages will
8 not adequately compensate Plaintiff for the amount of harm
9 suffered as a result of exclusion from participation in the
10 economic and social life of this state.

11 16. Plaintiff believes that architectural barriers
12 precluding Plaintiff full and equal access of the public
13 accommodation will continue to exist at Plaintiff's future
14 visits, which will result in future discrimination of
15 Plaintiff, in violation of the Americans with Disabilities Act.
16 Plaintiff is currently being subjected to discrimination
17 because Plaintiff cannot make use of and obtain full and equal
18 access to the facilities, goods and/or services offered by
19 Defendants to the general public. Plaintiff seeks damages for
20 each offense relating to each of Plaintiff's visits to the
21 subject property when Plaintiff was denied full and equal
22 access to the subject property or was deterred from attempting
23 to avail himself of the benefits, goods, services, privileges
24 and advantages of the place of public accommodation at the
25 subject property because of continuing barriers to full and
26 equal access.

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1 IV.

2 **FIRST CLAIM FOR**
3 VIOLATION OF AMERICAN WITH DISABILITIES ACT
4 42 USC §12101, et seq.

5 17. Plaintiff re-alleges and incorporates by reference
6 each and every allegation contained in paragraphs 1 through 16,
7 inclusive, as though set forth fully herein.

8 18. Plaintiff was denied full and equal access to
9 Defendants' goods, services, facilities, privileges,
10 advantages, or accommodations within a public accommodation
11 owned, leased and/or operated by Defendants, in violation of 42
12 USC §12182(a). Plaintiff was, therefore, subjected to
13 discrimination and is entitled to injunctive relief pursuant to
14 42 USC §12188 as a result of the actions or inaction of
15 Defendants.

16 19. Among other remedies, Plaintiff seeks an injunctive
17 order requiring compliance with state and federal access laws
18 for all access violations which exist at the property,
19 requiring removal of architectural barriers and other relief as
20 the court may deem proper. Plaintiff also seeks any other
21 order that will redress the discrimination to which he has been
22 subjected, is being subjected and/or will be subjected.

23 V.

24 **SECOND CLAIM FOR**
25 VIOLATION OF CALIFORNIA CIVIL CODE

26 20. Plaintiff re-alleges and incorporates by reference
27 each and every allegation contained in paragraphs 1 through 19,
28 inclusive, as though set forth fully herein.

29 21. Based on the facts plead hereinabove and elsewhere in

1 this complaint, Defendants did, and continue to, discriminate
2 against Plaintiff and persons similarly situated by denying
3 disabled persons full and equal access to and enjoyment of the
4 subject facilities and of Defendants' goods, services,
5 facilities, privileges, advantages or accommodations within a
6 public accommodation, in violation of California Civil Code
7 §§51, et seq., 52, et seq., and 54, et seq.

8 22. Defendants' actions constitute a violation of
9 Plaintiff's rights under California Civil Code §§51, et seq.,
10 52, et seq., and 54, et seq. and therefore Plaintiff is
11 entitled to injunctive relief remedying all such violations of
12 California access laws and standards. In addition, Plaintiff
13 is entitled to damages under California Civil Code §54.3 for
14 each offense. The amount of damages suffered by Plaintiff is
15 not yet determined. When the amount is ascertained, Plaintiff
16 will ask the Court for leave to amend this complaint to reflect
17 this amount. Plaintiff is also entitled to and requests
18 attorneys' fees and costs.

19 23. The actions of Defendants were and are in violation of
20 the Unruh Civil Rights Act, California Civil Code §§51, et seq.
21 and therefore Plaintiff is entitled to injunctive relief
22 remedying all such violations of California access laws and
23 standards. In addition, Plaintiff is entitled to damages under
24 California Civil Code §52 for each offense. The amount of
25 damages suffered by Plaintiff is not yet determined. When the
26 amount is ascertained, Plaintiff will ask the Court for leave
27 to amend this complaint to reflect this amount.

28 24. Plaintiff seeks all of the relief available to him

1 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and
2 any other Civil Code Sections which provide relief for the
3 discrimination suffered by Plaintiff, including damages and
4 attorneys fees.

5 VI.

6 THIRD CLAIM FOR
7 VIOLATION OF HEALTH AND
8 SAFETY CODE §19950, ET SEQ.

9 25. Plaintiff re-alleges and incorporates by reference
10 each and every allegation contained in paragraphs 1 through 24,
11 inclusive, as though set forth fully herein.

12 26. Defendants' facilities are public accommodations
13 within the meaning of Health and Safety Code §19950, et seq.,
14 and Plaintiff is informed and believes and thereon alleges that
15 Defendants have newly built or altered the subject property
16 and/or the subject facility since 1971 within the meaning of
17 California Health and Safety Code §19959. The aforementioned
18 acts and omissions of Defendants constitute a denial of equal
19 access to the use and enjoyment of the Defendants' facilities
by people with disabilities.

20 27. Defendants' failure to fulfill their duties to provide
21 full and equal access to their facilities by people with
22 disabilities has caused Plaintiff to suffer deprivation of
23 Plaintiff's civil rights, as well as other injuries.

24 28. As a result of Defendants' violations of Health and
25 Safety Code §§19955, et seq., described herein, Plaintiff is
26 entitled to and requests injunctive relief pursuant to Health
27 and Safety Code §§19953, and to reasonable attorney's fees and
28 costs.

VII.

FOURTH CLAIM FOR DECLARATORY RELIEF

3 29. Plaintiff re-alleges and incorporates by reference
4 each and every allegation contained in paragraphs 1 through 28,
5 inclusive, as though set forth fully herein.

6 30. An actual controversy now exists in that Plaintiff is
7 informed and believes and thereon alleges that Defendants'
8 premises are in violation of the disabled access laws of the
9 State of California including, but not limited to, Civil Code
10 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety
11 Code §§19950, et seq., Government Code §§4450, et seq. and
12 7250, et seq., Title 24 of the California Code of Regulations,
13 and/or Title III of the Americans with Disabilities Act and its
14 implementing Accessibility Regulations.

15 31. A declaratory judgment is necessary and appropriate at
16 this time so that each of the parties may know their respective
17 rights and duties and act accordingly.

VIII.

FIFTH CLAIM FOR INJUNCTIVE RELIEF

20 32. Plaintiff re-alleges and incorporates by reference
21 each and every allegation contained in paragraphs 1 through 31,
22 inclusive, as though set forth fully herein.

23 33. Plaintiff will suffer irreparable harm unless
24 Defendants are ordered to remove architectural barriers at
25 Defendants' public accommodation, and/or to modify their
26 policies and practices regarding accommodating people with
27 disabilities. Plaintiff has no adequate remedy at law to
28 redress the discriminatory conduct of Defendants.

1 34. Plaintiff seeks injunctive relief to redress
2 Plaintiff's injuries.

3 **IX.**

4 **JURY DEMAND**

5 35. Pursuant to Rule 38 of the Federal Rules of Civil
6 Procedure, Plaintiffs hereby request a jury trial.

7 WHEREFORE, Plaintiff prays for judgment against the
8 Defendants, EUROPEAN CAR SERVICE, ANDREW MACIEJEWSKI, ZENNON
9 SMOCZYNSKI and DOES 1 through 10, as follows:

- 10 1. For injunctive relief, compelling Defendants to comply
11 with the Americans with Disabilities Act, the Unruh
12 Civil Rights Act and the Disabled Persons Act. Note:
13 the plaintiff is not invoking section 55 of the
14 California Civil Code and is not seeking injunctive
15 relief under that section;
- 16 2. That the Court declare the respective rights and
17 duties of Plaintiff and Defendants as to the removal
18 of architectural barriers at Defendants' public
19 accommodations;
- 20 3. An order awarding Plaintiff actual, special and/or
21 statutory damages for violation of his civil rights
22 and for restitution including, but not limited to,
23 damages pursuant to the applicable Civil Code Sections
24 including, but not limited to, §§52 and 54.3 for each
25 and every offense of Civil Code §§51 and 54;
- 26 4. An award of compensatory damages according to proof;
- 27 5. An award of up to three times the amount of
28 actual damages pursuant to the Unruh Civil

1 Rights Act and the Disabled Persons Act; and

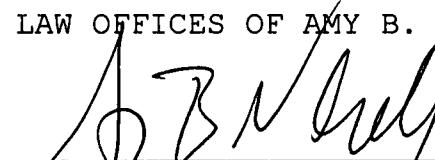
2 6. An order awarding Plaintiff reasonable attorneys' fees
3 and costs;

4 7. Such other and further relief as the Court deems
5 proper.

6 DATED:

12/19/07

7 LAW OFFICES OF AMY B. VANDEVELD

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9 AMY B. VANDEVELD,
Attorney for Plaintiff

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**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 145783 - SR
* * C O P Y * *
December 20, 2007
16:22:20**

Civ Fil Non-Pris
USAO #: 07CV2394 CIV. FIL.
Judge.: LARRY A BURNS
Amount.: \$350.00 CK
Check#: BC#3317

Total-> \$350.00

FROM: SPIKES V. EUROPEAN CAR SVC, ET
CIVIL FILING

IS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED

07 DEC 2007 PM 4:24

CLERK U.S. DISTRICT COURT
SAN DIEGO DISTRICT OF CALIFORNIA

Inclusive

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

BY: San Diego

DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED